

MSC

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KING DRUG COMPANY OF FLORENCE, INC., : CIVIL ACTION
et al., :
Plaintiffs, :
v. : No. 2:06-cv-1797 X
CEPHALON, INC., et al., :
Defendants. :

VISTA HEALTHPLAN, INC., et al., : CIVIL ACTION
Plaintiffs, :
v. : No. 2:06-cv-1833 X
CEPHALON, INC., et al., :
Defendants. :

APOTEX, INC., : CIVIL ACTION
Plaintiff, :
v. :
CEPHALON, INC., et al., :
Defendants. :
FEB 1 2010
MAR 4 2010
MICHAEL E. LUNA, Clerk
By Dep. Clerk
No. 2:06-cv-2768 - File

FEDERAL TRADE COMMISSION, : CIVIL ACTION
Plaintiff, :
v. : No. 2:08-cv-2141
CEPHALON, INC., :
Defendant. :

ORDER

AND NOW, this 29th day of March, 2010, upon consideration of Defendants' Motions to Dismiss, Plaintiffs' responses in opposition, and for the reasons stated in the accompanying Memorandum Opinion, it is hereby **ORDERED** as follows:

- 1) In The King Drug Direct Purchaser Class Action - King Drug Co. of Florence, Inc., et al. v. Cephalon, Inc., et al., 2:06-cv-1797, "Defendant Cephalon, Inc.'s Motion to Dismiss the Direct Purchasers' First Consolidated Amended Complaint and the Rite Aid Complaint," (doc. no. 200); "Generic Defendants' Motion to Dismiss the Amended Complaints of the Direct Purchaser Plaintiffs and End Payor Plaintiffs," (doc. no. 201); "Defendant Cephalon, Inc.'s Motion to Dismiss the Walgreen Complaint," (doc. no. 211); and "The Generic Defendants' Motion to Dismiss the Complaint Filed by Walgreen Co., et al.," (doc. no. 216), are **DENIED**.
- 2) In The Vista Healthplan End Payor Class Action - Vista Healthplan, Inc., et al. v. Cephalon, Inc., et al., 2:06-cv-1833, "Defendant Cephalon, Inc.'s Motion to Dismiss the Amended Consolidated Class Action Complaint of End Payors and the Amended Complaint of Avmed, Inc.," (doc. no. 86); and "Generic Defendants' Motion to Dismiss the Amended Complaints of the Direct Purchaser Plaintiffs and End Payor Plaintiffs," (doc. no. 87), are **GRANTED in part and DENIED in part**. The Motions are **GRANTED** in that the Vista Healthplan End Payor Class Plaintiffs' claims under the antitrust statutes of Florida (Count IV - ¶(d)), Louisiana (Count IV - ¶(i)), Massachusetts (Count IV - ¶(k)) and New York (Count IV - ¶(r)), and claims under the consumer protection statutes of Kentucky (Count IV - ¶(h)), Louisiana (Count IV - ¶(i)) and Wisconsin (Count IV - ¶(z)) are **DISMISSED**. The Motions

are **DENIED** in all other regards.

- 3) In The Apotex Litigation - Apotex, Inc. v. Cephalon, Inc., et al., 2:06-cv-2768, “Defendant Cephalon, Inc.’s Motion to Dismiss Counts III Through XIII of the Amended Complaint and to Strike Prayers for Relief,” (doc. no. 157); and “Generic Defendants’ Motion to Dismiss Apotex’s First Amended Complaint,” (doc. no. 158), are **DENIED**.
- 4) In The F.T.C. Litigation - Fed. Trade Comm’n v. Cephalon, Inc., 2:08-cv-2141 - “Defendant Cephalon, Inc.’s Motion to Dismiss the First Amended Complaint,” (doc. no. 43), is **DENIED**.

IT IS FURTHER ORDERED that Defendants shall file Answers to Plaintiffs’ Complaints on or before April 19, 2010. A Rule 16 Conference is scheduled for 10:00 a.m. on Thursday, April 22, 2010, in a Courtroom to be assigned. Counsel should contact Chambers at (267) 299-7500, two (2) days prior for Courtroom assignment. Attendance is limited to two (2) counsel per party.

At any time, but no later than April 19, 2010, counsel may submit to the Court suggestions regarding the scheduling of fact discovery; expert discovery; depositions, including coordination with depositions in the bifurcated Apotex patent declaratory judgment action; and dispositive motions. The submissions are limited to three (3) pages, and joint submissions are encouraged.

BY THE COURT:


Mitchell S. Goldberg
MITCHELL S. GOLDBERG, J.